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California Corporations Commissioner
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10 BEFORE THE DEPARTMENT OF CORPORATIONS
11 OF THE STATE OF CALIFORNIA
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13 In the Matter of the Accusation of THE) File No.: 100-3622
CALIFORNIA CORPORATIONS)
14 COMMISSIONER,) 1) ACCUSATION FOR THE REVOCATION
OF LICENSE;
15 Complainant,)
16 vs.) 2) CITATIONS;
17) 3) DESIST AND REFRAIN ORDER; AND
18 GREGORY & LISA NESBITT dba IMC)
POSTAL EXPRESS,) 4) ORDER VOIDING LOANS;
19 Respondent.)
20)
21)
22)

23 The Complainant is informed and believes, and based upon such information and belief, alleges
24 and charges Respondent as follows:

25 I.
26 **INTRODUCTION**

27 The proposed order seeks to revoke the deferred deposit transaction license of GREGORY &
28 LISA NESBITT dba IMC POSTAL EXPRESS (herein “IMC” or “Respondent”) pursuant to Section

1 23052 of the California Deferred Deposit Transaction Law (California Financial Code §§ 23000 *et*
2 *seq.*)(herein “CDDTL”) in that IMC has committed numerous violations of the CDDTL.

3 In view of the extent, nature and duration of violations the California Corporations
4 Commissioner, Preston DuFauchard (herein “Commissioner”) believes it is in the best interests of
5 the public to revoke Respondent’s CDDTL license pursuant to California Financial Code section
6 23052 and void loan transactions. The Commissioner has issued five (5) citations totaling in the
7 amount of \$40,015.00 and an order mandating the refund of \$29,639.16 to customers for excess and
8 illegal extension fees collected by Respondent pursuant to Financial Code sections 23058 and 23060,
9 respectively.

10 II.

11 FACTUAL BACKGROUND

12 The California Department of Corporations (herein the “Department”) is responsible for
13 enforcing provisions of the CDDTL and authorized to pursue administrative actions and remedies
14 against licensees who engage in violations of the CDDTL.

15 IMC currently holds deferred deposit transaction originator license number 100-3622 for the
16 25320 Madison Avenue, Suite A, Murrieta, California, 92562 location. IMC was licensed by the
17 Commissioner pursuant to the CDDTL at this location since on or about August 29, 2007.
18 Respondent has engaged in the business of deferred deposit transactions by offering, originating
19 and making deferred deposit transactions. A “deferred deposit transaction” (herein “DDT”) is a
20 written transaction whereby one person gives funds to another person upon receipt of a personal
21 check along with an agreement that the personal check shall not be deposited until a later date.
22 These transactions are also referred to as “payday advances” or “payday loans.”

23 In or about January 9, 2009 and March 9, 2009, regulatory Examinations of IMC at 395
24 25320 Madison Avenue, Suite A, Murrieta, California, 92562 (herein “Examinations”) were
25 commenced and disclosed the CDDTL violations set forth in this Accusation. Respondent willfully
26 engaged in these CDDTL violations. The examiner’s review of Respondent’s business revealed the
27 CDDTL violations described below warranting the issuance of a desist and refrain order, revocation,
28 citations or penalties, and restitution to consumers.

1 III.

2 **DEFERRED DEPOSIT TRANSACTION LAW VIOLATIONS**

3 **A. IMC is in Violation of the CDDTL Because They Did Not Provide Written Notice &**
4 **Agreements To DDT Customers.**

5 Pursuant to California Financial Code sections 23035(c) and (e), any person engaged in
6 the business of DDT's must distribute to customers written notice and transaction agreements
7 outlining specific information regarding the DDT. Moreover, pursuant to California Financial
8 Code section 23035(d), certain required notices must be clearly and conspicuously posted in the
9 unobstructed view of the public by all licensees in each location of a business in letters not less
10 than one-half (½) inch in height.

11 During the Examinations, it was discovered that IMC did not distribute the required
12 written notice(s) to customers before engaging in a DDT in violation of California Financial
13 Code section 23035(c). Also discovered during the Examinations was IMC's failure to distribute
14 a written agreement to customers before engaging in a DDT, in violation of Financial Code
15 section 23035(e).

16 Finally, IMC did not post notices as required by Financial Code section 23035(d). The
17 Examinations revealed no evidence of IMC posting any required notices with required
18 disclosures in letters of not less than one-half (½) inch in height in conspicuous view of the
19 public in the licensed location. As such, IMC is in violation of the CDDTL.

20 **B. DDT Extension & Excess Fees Charged By IMC Are In Violation of the**
21 **CDDTL.**

22 California Financial Code sections 23036(b) and (f) prohibit excess fees and/or extension
23 fees from being charged in a DDT.

24 A review of IMC ledger entries during the Examinations revealed IMC charged sixty
25 eight (68) customers six hundred forty five (645) fees to extend DDT loans totaling
26 approximately \$29,368.33 from April 1, 2007 to January 9, 2009. These fees were charged to
27 customers by IMC to extend DDT loans, in violation of Financial Code section 23036(b). By
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1 this violation, IMC is also in violation of Financial Code section 23036 (f), which states that a
2 licensee is not permitted to charge fees in excess of what is permitted in the Financial Code.

3 Ledger entries reviewed during the Examinations also reveal IMC collected
4 miscellaneous excess fees from nineteen (19) customers in approximately nineteen (19)
5 transactions totaling approximately \$330.83 from April 1, 2007 to January 9, 2009. These fees
6 were charged to customers in violation of Financial Code section 23036(f).

7 **C. IMC is in Violation of the CDDTL Because IMC Engaged In Unlicensed Activity.**

8 Pursuant to California Financial Code section 23005(a), one must be licensed prior to
9 engaging in DDT's. IMC was licensed on or about August 29, 2007. Analysis of IMC ledgers
10 revealed unlicensed activity from in or about April 2007 to August 28, 2007, prior to being
11 licensed. IMC entered into eighty (80) DDT's with approximately fifty (50) customers without
12 being licensed. As such, IMC engaged in unlicensed DDT activity in violation of the CDDTL.

13 **D. IMC Engaged In Other Activity In Violation of the CDDTL.**

14 The information gathered during the Examinations determined that IMC failed to verify
15 armed service and dependant status for all customers prior to entering into transactions in
16 violation of Financial Code section 23038(a).

17 Moreover, IMC failed to maintain evidence of customer's check in violation of Title 10
18 of the California Code of Regulations section 2025(c).

19 **IV.**

20 **COMMISSIONER'S AUTHORITY**

21 **A. The CDDTL Grants The Commissioner The Authority To Revoke IMC's License.**

22 California Financial Code section 23052 states the grounds for revocation of a CDDTL
23 license:

24 The commissioner may suspend or revoke any license, upon notice and
25 reasonable opportunity to be heard, if the commissioner finds any of the
26 following:

27 (a) The licensee has failed to comply with any demand, ruling, or
28 requirement of the commissioner made pursuant to and within the authority
of this division.

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(b) The licensee has violated any provision of this division or any rule or regulation made by the commissioner under and within the authority of this division.

(c) A fact or condition exists that, if it had existed at the time of the original application for the license, reasonably would have warranted the commissioner in refusing to issue the license originally.

B. The CDDTL Grants The Commissioner The Authority To Issue Citations.

California Financial Code section 23058 grants the Commissioner the authority to issue the citations issued herein, states:

(a) If, upon inspection, Examinations or investigation, based upon a complaint or otherwise, the department has cause to believe that a person is engaged in the business of deferred deposit transactions without a license, or a licensee or person is violating any provision of this division or any rule or order thereunder, the department may issue a citation to that person in writing, describing with particularity the basis of the citation. Each citation may contain an order to desist and refrain and an assessment of an administrative penalty not to exceed two thousand five hundred dollars (\$ 2,500). All penalties collected under this section shall be deposited in the State Corporations Fund.

(b) The sanctions authorized under this section shall be separate from, and in addition to, all other administrative, civil, or criminal remedies.

(c) If within 30 days from the receipt of the citation of the person cited fails to notify the department that the person intends to request a hearing as described in subdivision (d), the citation shall be deemed final.

(d) Any hearing under this section shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, and in all states the commissioner has all the powers granted therein.

(e) After the exhaustion of the review procedures provided for in this section, the department may apply to the appropriate superior court for a judgment in the amount of the administrative penalty and order compelling the cited person to comply with the order of the department. The application, which shall include a certified copy of the final order of the department, shall constitute a sufficient showing to warrant the issuance of the judgment and order.

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C. The CDDTL Grants The Commissioner The Authority To Issue Desist & Refrain Orders.

California Financial Code section 23050 grants the Commissioner the authority to issue the desist and refrain order issued herein, and states:

Whenever, in the opinion of the commissioner, any person is engaged in the business of deferred deposit transactions, as defined in this division, without a license from the commissioner, or any licensee is violating any provision of this division, the commissioner may order that person or licensee to desist and to refrain from engaging in the business or further violating this division. If, within 30 days, after the order is served, a written request for a hearing is filed and no hearing is held within 30 days thereafter, the order is rescinded.

D. The CDDTL Grants The Commissioner The Authority To Void DDT's.

California Financial Code section 23060 provides for the voiding of loan transactions:

(a) If any provision of this division is willfully violated in the making or collection of a deferred deposit transaction, the deferred deposit transaction contract shall be void, and no person shall have any right to collect or receive any amount provided in the deferred deposit transaction, any charges, or fees in connection with the transaction.

V.

CITATIONS

Pursuant to Financial Code section 23058, Respondent is hereby ordered to pay to the Commissioner within 30 days from the date of the following Citations an administrative penalty of three hundred forty five dollars (\$345.00) for each of the eighty seven (87) citations (CITATION A) amounting to \$30,015.00, and two thousand five hundred dollars (\$2,500) for each of the four (4) citations (CITATION B-D) amounting to \$10,000.00, all in the aggregate totaling forty thousand and fifteen dollars (\$40,015.00):

- CITATION A: violations of Financial Code sections 23036(b) & (f)-\$30,015.00;
- CITATION B: violation of Financial Code section 23005(a) - \$2,500.00;
- CITATION C: violation of Financial Code section 23035(e) - \$2,500.00;
- CITATION D: violation of Financial Code section 23035(c) - \$2,500.00; and
- CITATION E: violation of Financial Code section 23035(d) - \$2,500.00

AGGREGATE CITATION TOTAL = \$40,015.00

VI.**ORDER VOIDING DEFERRED DEPOSIT TRANSACTIONS**

Respondent willfully violated the above sections of the CDDTL by charging excessive or unauthorized fees and by entering into illegal deferred deposit transactions with consumers. Illegal loan transactions consist of the following: Sixty eight (68) customers were illegally charged on six hundred forty five (645) fees to extend DDT loans totaling approximately \$27,330.12 from April 1, 2007 to January 9, 2009; and IMC collected miscellaneous illegal excess fees from nineteen (19) customers in approximately nineteen (19) transactions totaling approximately \$330.83 from April 1, 2007 to January 9, 2009. Therefore, by reason of the foregoing, the Commissioner voids Respondent's transactions with at least eighty seven (87) consumers and at least six hundred sixty four (664) loan transactions and orders the return of the consumers' funds in an amount that aggregates at least \$29,368.33. Pursuant to California Financial Code section 23060 the above described deferred deposit transactions are declared void. This Order shall remain in full force and effect until further order of the Commissioner.

VII.**DESIST AND REFRAIN ORDER**

By reason of the foregoing, Respondent has engaged in unlicensed activity, and charged excessive fees in illegal deferred deposit transactions in violation of the California Financial Code sections 23005, 23035, 23036 and 23037. Pursuant to Financial Code sections 23050 and 23058, GREGORY & LISA NESBITT dba IMC POSTAL EXPRESS are hereby ordered to desist and refrain from violating Financial Code sections 23005, 23035, 23036 and 23037. This Order is necessary for the protection of consumers and consistent with the purposes, policies and provisions of the CDDTL. This Order shall remain in full force and effect until further order of the Commissioner.

VIII.**CONCLUSION**

Complainant, due to the foregoing, has issued eight (8) Citations, an Order to Refund Fees, a Desist and Refrain Order, and has voided at least six hundred sixty four (664) loan transactions

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pursuant to California Financial Code sections 23050, 23058, 23060, and 23061 respectively.

WHEREFORE, Complainant, the California Corporations Commissioner prays that the deferred deposit transaction license of Respondent, GREGORY & LISA NESBITT dba IMC POSTAL EXPRESS, be revoked pursuant to California Financial Code section 23052.

Dated: June 10, 2010
Sacramento, California

PRESTON DuFAUCHARD
California Corporations Commissioner

By _____

ALAN S. WEINGER
Deputy Commissioner